

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF HAWAII

3
4 WAYNE BERRY,

5 Plaintiff,

6 vs.

7 FLEMING COMPANIES, INC.,

8 aka FLEMING FOODS, INC.,

9 aka FLEMING, DOE

10 INDIVIDUALS 1-50 and

11 DOE PARTNERSHIPS,

12 CORPORATIONS and OTHER

13 ENTITIES 1-20,

14 Defendants.

CIVIL NO. 01-00446SPK-LEK

15 PARTIAL TRANSCRIPT OF PROCEEDINGS

16 The above-entitled matter came on for Jury
17 Trial commencing at 10:25 a.m. on Monday, February 24,
18 2003, Honolulu, Hawaii,

19 BEFORE: HONORABLE SAMUEL P. KING

20 United States District Judge

21 District of Hawaii

22
23
24 REPORTED BY: LISA J. GROULX, COURT REPORTER

25 Notary Public, State of Hawaii

I N D E X

OPENING STATEMENTS: PAGE

by Mr. Hogan 9

by Mr. Smith 22

PLAINTIFF'S WITNESSES:

WAYNE BERRY

By Mr. Hogan 33

EXHIBITS: MARKED RECEIVED

Plaintiff's Exhibit 136 35 37

Plaintiff's Exhibit 82 45

Plaintiff's Exhibit 78 51

Plaintiff's Exhibit 81 61

Plaintiff's Exhibit 69 67

Plaintiff's Exhibit 71 77

Plaintiff's Exhibit 89 82

Plaintiff's Exhibit 72 89

Defendant's Exhibit 221 67

Defendant's Exhibit 223 77

1 right of his right to control derivative copies of his
2 software.

3 The EULA that Mr. Berry presented to Fleming
4 was a document that Fleming took in its hands and
5 began using his software, as the evidence will show.
6 That EULA prevented Fleming from using the software
7 through what is known as application sharing or PC
8 Anywhere where another company can dial into it and
9 use software.

10 The evidence will show that, as we sit here
11 today, a company on the mainland is using Mr. Berry's
12 software through PC Anywhere.

13 The evidence will show, through the testimony
14 of Mark Dillon, a former API employee hired by Fleming
15 who had access to Mr. Berry's system when he was at
16 API and had access to the copies that were given to
17 Fleming that he created numerous changes to the
18 freight data base system, the freight control system,
19 a hundred changes.

20 Each of these changes, by the understanding,
21 were to be made by Mr. Berry not be a Fleming employee
22 without his authority.

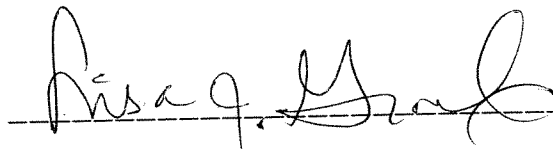
23 There will also be evidence that there was
24 another program, the Fleming PO.EXE, which there will
25 be evidence of how it takes data from companies and

CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, Lisa J. Groulx, Court Reporter, District
of Hawaii, Honolulu, Hawaii, and Notary Public, State
of Hawaii, do hereby certify that the foregoing is a
true and correct partial transcript of the proceedings
in this Jury Trial, WAYNE BERRY vs. FLEMING COMPANIES,
INC., ET AL., at Honolulu, Hawaii, taken on Monday,
February 24, 2003, before the Honorable SAMUEL P.
KING, United States District Judge.

February 24, 2003



LISA J. GROULX, COURT REPORTER

Notary Public - State of Hawaii

My Commission Expires on: 5/15/06